



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,353	02/14/2004	Theodore W. Crofford	503099.000005	1997

24283 7590 10/04/2005

PATTON BOGGS  
1660 LINCOLN ST  
SUITE 2050  
DENVER, CO 80264

EXAMINER

REIMERS, ANNETTE R

ART UNIT	PAPER NUMBER
----------	--------------

3732

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/779,353	<b>Applicant(s)</b> CROFFORD, THEODORE W.	
	<b>Examiner</b> Annette R. Reimers	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005 and 11 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23, 25-33 and 36-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/11/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Species I, Figure 7, in the reply filed on July 11, 2005 is acknowledged. The traversal is on the ground(s) that in addition to claims 21 and 31 being considered generic, applicant believes that claims 22-23, 26-33 and 36-40 are generic and that Figures 2-5 also apply to the elected species, Figure 7. This argument is found persuasive and examiner agrees with applicant that claims 21-23, 26-33 and 36-40 are generic and that Figures 2-5 apply to the elected species, Figure 7.

It is also acknowledged that applicant believes that claims 21-23, 25-33 and 35-40 read on the elected species. Examiner agrees with applicant regarding all of the claims.

Claims 24 and 34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 11, 2005.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-23, 25-27, 29-33, 35-37 and 39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Baroud et al. (PCT Publication Number WO00/06054).

Baroud et al. discloses an implant for replacing the proximal portion of a femur having a substantially intact natural femoral neck and a lateral side opposite the femoral neck, wherein the implant comprises a solid body member, 4, having a longitudinal axis, a distal end, and a proximal end, being configured for positioning, in use, in the natural femoral neck such that the proximal end of the solid body member is not distal to a narrowest portion of the femoral neck (see figure 4). In addition, the proximal end of the solid body member is at or proximal to a narrowest portion of the femoral neck and the distal end of the solid body member extends distal to the narrowest portion of the femoral neck (see figure 4).

The implant further includes a head member, 20, having a distal end and a proximal substantially-spherical portion configured for positioning in a natural or prosthetic hip socket, a joining member, 2', positioned between the distal end of the head member and the proximal end of the body member, a fastener, 22', spaced distally from the joining member and insertable, in use, between the distal end of the body member and the exterior of the lateral side of the femur, substantially in line with the

Art Unit: 3732

longitudinal axis of the solid body member and wherein no other fasteners pass within or through the femur (see figure 4).

The solid body member has a length for positioning, in use, in the natural femoral neck without passage of the distal end through the lateral side of the femur. The body member further comprises a collar, 21', positioned at the proximal end of the body member and configured for abutting contact, in use, with a proximal surface of the resected femoral neck. Furthermore, the body member, the head member, and the joining member are capable of being integrally attached (see figure 4).

The body member and the joining member are an integral unit (see figure 4). The joining member comprises at least one morse-tapered portion (see figure 4). The fastener comprises a compression screw extending between the exterior lateral side of the femur and the solid body member (see figures 1 and 4). The distal end of the solid body member is configured to connect with the fastener and at least a portion of the body member is substantially circular in cross section (see figure 4).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baroud et al. (PCT Publication Number WO00/06054) in view of Sotereanos (U.S. Patent 6,284,002).

Baroud et al. discloses the claimed invention except for a first surface coating on at least a portion of the body member for promoting bone ingrowth into the coating following implantation. Sotereanos discloses an implant for replacing the proximal portion of a femur comprising a porous coating, 22, and teaches the use of a porous coating in order to promote bone ingrowth (see column 5, lines 19-42, and figure 1). It would have been obvious to one skilled in the art at the time the invention was made to construct the implant of Baroud et al. with a first surface coating on at least a portion of the body member in view of Sotereanos, in order to promote bone ingrowth into the coating following implantation.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR

AR



EDUARDO C. ROBERT  
PRIMARY EXAMINER